

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID L. LEAVEN,)	
)	
Plaintiff,)	
)	
v.)	1:04CV00907
)	
PHILIP MORRIS USA INC. and the PHILIP)	
MORRIS COMPANIES INC. SEVERANCE)	
PAY PLAN or its successor in interest,)	
)	
Defendants.)	

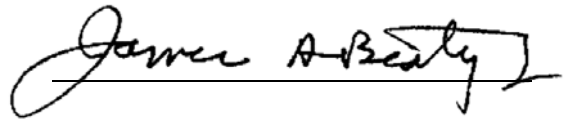
ORDER

BEATY, District Judge.

For the reasons discussed in the Memorandum Opinion, Plaintiff's Motion to Strike [Document #15] Defendants' Reply Brief in Support of Defendants' Motion to Sever and Stay Plaintiff's ERISA Claim is DENIED. IT IS FURTHER ORDERED THAT Defendants' Motion to Dismiss [Document #7] is DENIED and instead the Court hereby orders the REMAND of Plaintiff's ERISA claim to the Severance Pay Plan for an initial determination. The Court will GRANT IN PART, AND DENY IN PART Defendants' Motion to Sever and Stay Plaintiff's ERISA claim [Document #11]. To that extent the Court hereby denies Defendants' Motion to sever the two claims as they involve common questions of fact and can be most expeditiously determined together. However, the Court hereby orders a STAY of both of the claims while the administrative process concerning Plaintiff's ERISA claim is ongoing consideration by the Severance Pay Plan. The Court further orders that within 45 days from the

date of this Order Plaintiff shall file his claim with the Severance Pay Plan, which the Court will deem to be timely filed. After Plaintiff files his claim with the Severance Pay Plan, Defendants are directed to expeditiously determine whether Plaintiff qualifies for benefits. In that vein, Defendants may proceed according to ERISA's regulations concerning the deadlines for deciding claims, which provide for 90 days to decide the initial claim, 60 days for Plaintiff to file an appeal with the Severance Pay Plan, if necessary, and 60 days for the appeal to be decided. Following the Severance Pay Plan's final determination on Plaintiff's ERISA claim, the Court will lift the stay on the entire case.

This, the 6th day of June, 2006.

A handwritten signature in black ink, reading "James A. Beatty". The signature is written in a cursive style with a large initial "J" and a stylized "A".

United States District Judge